# DECIDES AS TO WATER

# The Supreme Court Passes on Old Suit.

(From Thursday's Daily.)

The Supreme Court Festerday in decision setting aside the judgment of the lower court in the case of Hawall-an Commercial and Sugar Co. vs. Walluku Sugar Company, decided numer ous questions of interest to plantation men generally, relating to water rights. The opinion is written by Chief Justice The case involved the water rights to the Walluku stream, the defendant having constructed a dam at Manienie, which, it was claimed by plaintiffs, diverted the atream so as to deprive them of water to which they were entitled. The case has already been before the Supreme Court, and it was previously decided that the defendant had a right to construct the dam. though there was no ruling as to the question of diversion of water to which defendant was not entitled. The court says, "The main question was whether the ancient method of diversion established by prescription had been changed by prescription. \* \*

prescriptive day right might cover all the water in the stream in dry times. but that would be, not because it covered all the water, however much there might be, but because it covered a certain amount, and there was not more than that amount in such times. The court further holds that the for mer decision was based on the ground that the exercise of the defendant's right by day could not diminish the plaintiff's supply by night.

In conclusion the court says We will assume that the matters for We will assume that the matters for-merly decided are the same so far as they go as the matters now in dispute, as, for instance, that the dams and flumes are the same in the two cases. Then, as shown above, it is res judicate that the dam was lawfully constructed and maintained by the defendant, but not that the defendant can take water whether prescriptive or surplus, from above the dam to lands, whether kuis or kalo, that have no prescriptive right or kalo, that have no prescriptive right to water from that point. It is res judi-cate that the tapping of kalaniauwai by means of a flume and the taking of wa-ter thereby to the kula lands to which it was formerly taken by the defendant is lawful, provided it still desists from us-ing a sufficient quantity of water on its other lands then uncultivated but maying presentative water rights but that prescriptive water rights, but not that it can lawfully so take more water el-ther surplus or prescriptive than for-merly or even the former amount if it has resumed the use of water on such other lands or even additional water in lieu of using water on other lands having prescriptive rights, whether since acquired or then owned and not included in those then owned and uncultivated. It is res judicata that alleged 125 acres and more of kalo lands belonging to the plaintiff in the lower part of the valley are not entitled to a continuous flow of water, and that the defendant has the exclusive right, subject to the exceptions mentioned in the former decision, to the day water, except on Sunday, up to the amount to which its former estate was entitled by prescription even though that was at times all the water in the stream. It is not res judicata that the defendant is entitled by prescription, subject to the above mentioned exceptions, to all the water, however much there might be, in the stream during the times above mentioned, or that the defendant is ontitled to a proportional share or any share of the surplus or Sunday water, or that it is not so entitled.

It follows that the former decision is not a complete har to the present suit and does not sover completely the several acts now complained of in bar to which that decision is pleaded. It may be re-

opinion: each other are adjudicated, whether there are cross-pleadings between them or not, if the matters could be adjudicated un-

One who appears generally and is made a party at his own request is bound by the decree so far as it properly goes jurying dinner the pleadings, even though he appeared in consequence of a published repeared in the was not so broad as the \$331.27.

The doctrine of splitting causes distinguished from that of res judicata.

So far as the ultimate matter adjudicated is concerned, all intermediate mat-

ters are conclusively presumed to have been adjudicated whether in fact raised or adjudicated or not. As to other ultimate matters, only those intermed ate matters are regarded as adjudicated which were in fact ad-

judicated. Other ultimate matters themselves are not regarded as adjudicated if they were not in fact adjudicated although they might have been so far as the pleadings

ere concerned.
A decree is binding as to necessary in-

whether it tank it is Jorge or Small diliber or to lands that but or to lands that but or to lands their had or to lands their had the water lighter but on the land and lands their of an after note day And hight use as res Jorian in other soils between the same justice as to the same or other acts extends and

The decision in Lemman vs. Walluk: Sugar Co., s Haw., 62, that the defend and had sp exclusive day right to water conjugat to region exceptions, teferre to prescriptive rights only and aid no cover surgius or storm water. It was t intended to come entries water, no. it a necessary infrarest that it did optio of an actual contrary intention That decision did not taside from the finding as to an exclusive prescriptive day right, adjudge that the defendant had a general right to a fair proportion of the surplus water, or that it was not then taking more than its proportion, if it had such a right. The court did not proportion to the first of the court did not proportion of the court did not proportion. intend to so ducide, nor is it a norma-sary inference that it did, even if the pleadings were broad enough to have permitted it to do so.

The three circuit judges held sessions yesterday for the first time. In the morning Judge Robinson called the civil calendar in the Ewa court room. while Judge Gear heard criminal cases in the Supreme room, and in the afternoon Judge Humphreys held court in to Mexico his chambers.

The presence of the attorneys before Robinson made the trial of criminal

Agricultural Co., caused the most trou-Agricultural Co., caused the most true ble. Mr. Lewis was first appointed to defend, and he offered as an excuse that he was attorney for the Waialua Company and consequently not able to defend where he should have been prosecuting. The excuse was accepted and titles will be found everywhere toward the south from these localing. defend, and he offered as an excuse that he was attorney for the Waialua ecuting. The excuse was accepted and ities, with additional host preying on the Mr. Lewis given another charity Job. same. Or the insects bred from the Then Mr. Brooks was called in, but he white lantana, two at least could be pleaded a trial before Humphreys and safely introduced here, providing they thus escaped the duty, though he was in the same of the sam thus escaped the duty, though he was also given a prisoner to defend. Frank Thompson came next and his excuse Thompson came next and his excuse wasn't strong enough to secure a release, and he began then the defense of the prisoners, but not until Davis, who happened to stray into the court room, was given a like billet. Davis pleaded that he was busy and sick and besides lease, and he began then the defense of happened to stray into the court room. was given a like billet. Davis pleaded that he was busy and sick and besides that he was busy and sick and besides all colors. The larvae of some of them had been working a week for charity feed on living plants, forming burrows in the appeal of Osaki Mankleho. The court wouldn't allow the excuse, how- in the leaves. ever, and the attorney was given a native boy to defend, who was about to H. throw his arms about his defender-tobe when Davis escaped.

Porto Ricans defended by Thompson were Hypolito Feliciano, Augustine Barga and Angel Marcilo and the trial occupied the entire day.

The jury returned a verdict of guilty of burglary and recommended the defendants to the mercy of the court. Sentence will be passed this morning.

### OTHER CRIMINAL CASES.

Louisa Torres and three other Porto Rican girls who were the net results of a recent raid at Iwilel, were discharged upon motion of Attorney Kaulukou, because there had been no written com-plaint in the police court. Two of the girls are still in jail under a second charge. Judge Gear warned the girls more careful in the future and advised them to go to work.

Wong See charged with assault and ing been no complaint on file in the rarely

were let go for the same reason

### BEFORE HUMPHREYS.

Judge Humphreys heard another plumbing suit yesterday—Gehring & Butzke vs. T. Hanita. The jury

that decision is pleaded. It may be relied on as far as it goes but beyond that the questions are still open.

The decree sustaining the plea is set asids and the case remitted to the Cuttuit Judge for further proceedings.

The following this the case of Apana vs. D. Kui was called and a jury drawn. This is a suit on a premissory note, and for an account which plaintiff claims is due him for goods sold and delivered to the native. The latter denies having signed the promissory The decree sustaining the plea is set and for an account which plaintiff claims is due him for goods sold and delivered to the native. The interpolation.

The following is the syllabus of the following is the syllabus of the following between co-defendance of the jurymen was compelled to execute his signature in the courtroom. and when they are adversary to each execute his signature in the discount other, and when their rights as against with results not altogether favorable to other, and when their rights as against bimself. He claims also that he furble of the control of the contr eross-pleadings between them or not, hished fish to plaintiff two and three times a week, and is not indebted to him in any sum whatever. The total

amount sued for was over \$600. The jury was instructed at 5 o'clock, and had not agreed at 6, when the Jurymen were taken to the Grill for dinner. At 9 o'clock a verdict was reported for plaintiff in the sum of \$331,27. F. M. Brooks appeared for

plaintin. BECKY IS FREE OF MAGOON. Judge Gear yesterday terminated the Becky Panes spendthrift trust, and ordered the guardian, J. Alfred Magoon, to return to her all property now in his possession. The court said: "I am satisfied that the ward does not now come within the definition of a spendthrift, and that if such guardianship ever were necessary, it is no long-

The court quotes from Tiedeman's "Limitation of Police Power," as fol-

The claim has also been made that A decree is binding as to necessary in the property of spendibrifts may be ferences though not as to possible or taken from them and placed under the probable inferences from it. Under a complaint that the defendant unlawfully constructed and maintained a matter to determine just what degree dam and by means thereof diverted water, a decision that the dam need not be seen of property a spendthrift. Webremoved because it might be lawfully used for a diversion to certain land and does not appear to be used for a diversion to any land, does not settle that is might lawfully be used for a diversion to the lawfully a grant to be a very difficult to the lawfully appear to be a very difficult and the defendant in the would appear to be a very difficult and the lawfully appear to be a very difficult and the defendant in the would appear to be a very difficult and the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appear to be a very difficult to the lawfully appe for the Islands. might lawfully be used for a diversion to other lands.

Nor does a decision that a certain quantity of water lawfully be diverted at the same or any less quantity may lawfully be diverted at this dam.

A decision that a certain quantity of water may be taken from an ancient ditch by means of a new flume to lands that have no water rights because of a discontinuance in the use of a certain other quantity of water on other lands that have no water rights because of a discontinuance in the use of a certain of the quantity of water on other lands that have may be taken from an ancient ditch by means of a new flume to lands that have no water rights because of a discontinuance in the use of a certain years, to an equable and moderate expenditures of his income, with the entry of water on other lands that have water rights because of a discontinuance in the use of a certain years, to an equable and moderate expenditure of his income, with the entry of water on other lands that have water rights because of a discontinuance in the use of a certain years, to an equable and moderate expenditure of his income, with the entry of water on other lands that have water rights because of a discontinuance in the use of a certain years, to an equable and moderate expenditure of his income, with the entry of water on other lands that have water rights decause of a proper provision for his income, with the entry of water on other lands that have water rights decause of a proper provision for his income, with the entry of water on other lands that have water rights decause of a certain quantity if the use of water on other lands that have water rights decause of a derang-could find the he could lawfully be diverted at this dam.

A decision that a certain quantity of water on other lands that he is suffering from a form of the date of the constitutionality of the law, but it would be well to remember that as all are agreed, at least since June 16, 1990, we have been living in a free country, and that the closing remarks of Mr. Tiedem

## Koebele Advises Bringing of Insects.

Entomologist Eochele has submitted o Governor Dole a report upon the insects preying upon hastana in Mexico, the intention being to introduce the species to curtail the growth of the njana in Hawall. Professor Kostele stated yesterday that where the lantana in this territory produced himdreds of seeds to each plant while in Moxico buil a dozen seeds to several Bushels of the inntann is the rule, and the enstaughts of insect enemies is haid to be responsible for the freedom frothe peat in the latter country. Mr. K. bele, in his report advises strong against spreading the blight which new preving on the lantana on slaui. and warm against its indiscriminate distribution in the Islands. A furtheexamination of the lantana will made by Kaebele on his coming visit

The report of the Entomologist is as

The presence of the attorneys before Robinson made the trial of criminal cases rather difficult, as the defendants ready had no attorneys to defend them. Three Porto Ricans, charged with burglarizing the store of the Waining Agricultural Co., caused the most trousmade during my visit to that country in the country in th

It appears that very little is known of or mines in various parts and expecially

n Fauna Hawaiiensis, Diptera, by P. Grimshaw, just received, we find the following note: "Two specimens belo ing to this genus were obtained by Mr. Perkins. One was beaten from trees at a height of 2000 feet, in the Walance mountains, Oahu, in April, 1852; and the other is from Kona, Hawati, and was obtained at a height of 4000 feet, in September of the same year. Both spo-mens agree in most respects with Pictella, Thoms., described from Ca described from Call forma, except that the abdomen is entirely black. In the present state of our knowledge of this genus I think it wiser to defer the description of this species rather than add another to the long list of those already named, which must include a great many synonyms."

NOTES ON LANTANA INSECTS.

A few seeds of Lantana Camara col betes at Cuautla, Morelos, Mexico, Aug. 25, 1888, produced a number of flies up to October. Bur few mature seeds were observed on the shrules and it seems that most of them are infested and eaten out wong See charged with assault and by this dipterous larvae, hence the battery, was also released, there hav- scarcity of the plant which is found but

Mr. Coquiflet, in charge of the Diptera Manuel Gracia and Mrs. Lina Bailey at the Department of Agriculture, Washington, D. C., tells me the fly is an Acromyza, and furthermore, these flies have never been known to be injurious. Both Dr. Howard and Schwarz would not recommend the introduction of this fly into Hawall, saying it is not to be

told what it may lead to.

I should not besitate, for a moment, LANTANA-WHITE FLOWERING.

No. 1505 Also at the end of August, 1898, at Cuautla, Morelos, Mexico, the seeds of the white flowering Lantana were examined and collected. On several shrubs tot a single mature or good seed could be found, owing to the mass of insects preging on the same.

I. The larvae of a Lycaena ta small blue butterfly) was found but not raised. This could be introduced here if also found eating the seeds of i. Camara.

2. The larvae of a small Pyralid was most numerous. The moth was Should not be introduced until better

Known.

3. A small Tine'd was also bred.
Should be more carefully studied.

4. A small Trypeda fly appears to be very numerous. Its larvae living within the seeds. This may be of great importance if it should be found to devour the seeds of our Lantana.

5. The larvae of a Conference of the Conferen

of our cantina.

5. The larvae of a Cecidomyla fly, Very increase and eating our the seeds. May equally important for us.

A few remains of Chalcid flies saved are apparently all parasitic upon one or the other of the above insects the other of the above insects. Under the date of August 24th, 1901, I have fully reported upon Orthezia In-sign's, preying on Lantana, on Maui, the possibility of what this scale may do on our Islands. I have since learned that it is also recorded from the West In-dies where it has no better reputation then in India and Coylon, and again would warn of an indiscriminate distribu-tion over all the Islands of this setious pest. The sooner we can introduce an

> Respectfully ALBERT KOEBELE, Entomologist

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effective enemy for the same, the better

likel of Face Mon by

Scattery has been discreptioned, when 2. Whitele has been continue to a test, court \$.32. per administration the Mixtun walking theretages, by \$410

of eight of nonther. He may have its proof Abon Firm, give away his entire rections and become a larger and a sanderer upon the fare of the earth, and no one in a free state dark dark

# DOINGS OF THE

A NAMAULU, Libre, Eauni, Peb. 18.—Our new paper, The Garden Island, edited by Mr. Stepa, a Japanese, is full of good things. Following are some of its local bravities. which cover, very clearly, the news of Kaual for the week!

Dr. Hutchinson and Dr. Derby are making a tour of the fehred. They will be on Kauni for some time to come. It is said that Mr. Jehn D. Willard will represent the government on Kanal in the tax appeal cases. It is claimed that a road grader with

It is claimed that a road grade, with two men and sight makes in a day can do the same work as first men with pick and showed it might be a great saving to the road isolated it they looked this up, respecially when later is no scarce.

The polo fever bias teached Kauni, Both Waimen and Kauni have teams practicing regularly, and we may look for a spritted contest between these two for a spritted contest between these two

practicing regularly, and we may look for a spirited contest between these two rival districts in the near future.

Scarcity of fish now seems to be a thing of the past on Kauni. Between Waimea and Hanalei there is estimated to be from thirty to forty or even more fishing boats. The Japanese have slowly but surely learned from the natives the habits of different kinds of fish. With their determined and industrious ways they are able to make a good living by basing. Behing. The amount of soda water manufac

tured and consumed on the Garden Isle is surprising. If one would take the trouble to get statistics, in all probability Kauai would not be far behind the world's record in the amount consumed per capita. There are soda works in Linue, Koloa, Eleele and Walmen. In a short time two more soda factories will be started, one in Kapaa and one in Hanalei.

A lot of petty thefts are going on now on this island. It is rumored that some one has broken into Koioa store and got away with some jewelry, etc. Two Japaneae were robled of their moddes and bridles near Kapala a few nights ago.

The trouble between Japanese contractors and Mr. Wong Feart of Kapala has been compressed.

een compromised. In the suit brought up before Judge tabele by Kwong Sing Wal & Co. ef Hanamaulu, against Wahlne-aloha of the same place, in regard to fishing rights, the defendant was acquitted.

Mr. Ah Chuck, a rich Chinese merchant of Kapaia, has added a two-story build-ing to his store.

The Kamehameha Glee Club gave a delightful concert in the Y. M. C. A. of Libue. It was a rare treat for music lovers, and we hope they may vis.t us again in the summer. They will give concerts in Kolen. Electe and Watmea.

Air. W. C. Farke returned last Saturday to Honolulu. He has been making

his annual inspection of the Libue Plan-tation, besides enjoying a very pleasant tation, besides enjoying a very pleasant visit with his many friends on the Gar-

Ewart and Miss Ewart were in Libue for a few days. They report heavy

The S. P. C. meeting was held as usual on Wednesday last. Out of respect to the How Wong Society they adjourned until after the Chinese New Year.

Mrs. "Jack" Coney is back.

The Misses O'Cannel are in Linus new.

The Misses O'Connel are in Linue new. The marriage bells will ring again this north in Lihue, when Mr. Hills and Miss O'Connell are made one,

Mr. and Mrs. Purvis have entertained the young people of Libue in delightful informal dances.

The Wilcoxes are spending a few days Mrs. Flohr is visiting her sister, Mrs.

Hogg. The engagement is announced of Miss Edith Wallace to Col. Hayes. Miss Wal-I should not besitate, for a moment, to introduce the same here. In fact, I have repeatedly written to Mexico for green seeds of Lantana to study the fly carefully, yet nothing could be obtained.

LANTANA—WHITE FLOWERING.

ing materials, The engagement is unnounced of Miss Watt and Mr. Fisher. Both parties are very popular in Libue society.

Mr. and Mrs. Francis Gay were in Li-hue for a few days' visit. Mrs. Christ has arrived to take charge

of the Linux Hospital.

Mr. M. F. Prosser has been quite iil, but is on the road to recovery.

Mr. Baldwin, of Makaweli, has been over to Lihue on a business trip.

It is understood that many Lihue people will attend the imaguerade ball at will attend the inasquerade ball Walmea, which takes place on the 22nd of this month.

Miss Watt has returned to Libue to prepare for her wedding, which is to take place this coming summer.

### SHE RECOMMENDS CHAMBER-LAIN'S COUGH REMEDY.

'I have used Chamberlain's Cough Remedy for a number of years and have no hesitancy in saying that it is the best remedy for coughs, colds and croup I have ever used in my family. I have not words to express my confidence in this remedy.-Mrs. Moore, North Star, Mich., U. S. A. For sale by all druggists and dealers. Benson, Smith & Co., Ltd., agents for Ha-

### Police Items.

Burglars broke into Waller's stall at the fish market some time Tuesday night or yesterday morning, and carried away a box of oranges, soveral bunches of bananas and a couple dozen bottles of jelly.

The cases of Nichiyama and Ah Wa went over until this morning. They

Sick mother-sick child! That's the way it works when a mother is nursing her infant,

Scott's Emulsion is an ideal medicine for narsing mothers, It has a direct effect on the milk. Sometimes the mother ! is weak; her thin milk does not make the baby grow. Scott's GARDEN ISLE Emulsion changes all that. The rich cod-liver oil in Scott's Emulsion feeds the mother and gives a flow of rich, nourishing milk for the baby.

> The medicine in Scott's Emulsion not only strengthens the mother but goes naturally through the milk and strength ens the child.

Nothing to harm-all for good-Scott's Emulsion.

We'll send you a little to try, it you like, SCOTT & BOWNE, any Pearl street, New York

. USE .... KOMEL SODA At Home. At the Club. At Your Receptions. and at all Social Catherings.

CONSOLIDATED WATER WORKS CO.

LIMITED. els Agents for the Hawaiian Islands Island Orders Solicited, Perephone Main 71.

DINNERS TO FRIENDS. Mr. George Hone and Mr. and Mrs. Grinbaum Entertain.

George Hons of Walluku, entertained several friends at the Moana hotel at dinner last evening. The decorations were in rose, pink and carnations. The guests at table were Dr. Raymond, Mr. R. R. Berg, Mr. Arthur Wilder and Mr. C. T. Holloway.

Mr. and Mrs. M. S. Grinbaum werthe hosts at a most pleasing dinner the preceding evening, the guests being Mr and Mrs. P. N. Lillenthal, and the members of their immediate party The dinner was an Hawaiian one and the decorations of the tables were in the colors of the country, there being as well a profusion of flowers. Added to the bright coloring of these were several delicate electrical effects and the whole was a most pleasing picture. In addition to this there were a number of parties of smaller numbers, especially many persons from the transports, who had the double enjoyment of a dinner by the sea and the music by the band later.

In gintensely from an attack of billous colic, sent to a near by drug store for something to relieve him. The druggist sent him a bottle of Chamberlain's three doese of which effected a permanent cure. This is to only remedy that can be depended to an in the most severe cases of calle and cholera morbust the band later. to the bright coloring of these were by the band later.

The San Francisco chamber of cemmerce and merchants' exchange passed resolutions favoring admission of Chi-nese clerks, etc. The action was denounced in a mammoth labor meeting a few days later.

# Special Sale

## Landscape Glasses.

ONE HUNDRED LOZEN NINE-OZ. FINE, THIN BLOWN TUMBLERS WITH DIAMOND HEAD ENGRAVED THEREON AT 50: PER DOZEN AT W. W. DIAMOND & COS

Dealers in Pottery, Gianaware, Art Goods, Household Utensils, Lamps, Cutlery, Plated Ware, Hotel Supplier, etc.,

Sole agents for Gurney Clean-Refrigerators, Detroit Jewel Stoves, Purilin Elue Flame Stoves, Reed & Barton's Silverware, genuine doublecoated Granite Ironware, Homer Laughlin Potteries, United States Cream Separators, Challenge and Dandy Windmills.

Refrigerators and Stoves sold on the installment plan.

Goods delivered to all parts of the city and suburbs free of

# W.W. Dimond & Co.

LIMITED. 53-55-57 King Street, Henolulu.

BILIOUS COLIC H. Scever, a carpenter and builder of Kenton, Tenn., U. S. A., when suffer-ing intensely from an attack of billous ommend it when such a medicine is called for. For sale by all druggists and dealers. Benson, Smith & Co., Ltd., agents for Hawaiian Islands.

The handsome main entrance doors for the new Hackfeld building have been put in.

### HAVE YOU TRIED

# Primo Lager?

The best tonic, and is absolutely pure.

# Extension Dining Tables

We are safe in saying that a more beautiful line of dining room furniture was never seen in Honolulu. They consist of round and square tables of rich quarter sawed golden cak, the round tables measuring five feet across.

## WILTON, AXMINSTER AND SMYRNA RUGS

An entirely new stock of gorgeous designs just opened and will sell rapidly. Come and get yours before the prettiest ones are selected.

# HOPP & CO.

Leading Furniture Dealers."

CORNER KING AND BETHEL STS.